

DUNAWAY LAW FIRM, LLC

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May 26, 2021

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Kevin Goode, AIC
Branch Manager – Greenville Claims
Auto-Owners Insurance Company
PO Box 27125
Greenville, SC 29616-2125

RE: JIMMY JOHNSON – DBA ACQUISITION PROPERTIES, INC. VS. AUTO-
OWNERS INSURANCE
CLAIM NO.: 300-159355-2018
CASE NO.: 2021-CP-04-00974

Dear Mr. Goode:

Please find attached a courtesy copy of the Summons and Complaint which I have filed on behalf of Mr. Jimmy Johnson. Could you please provide me with the proper entity in which to serve the Complaint upon? I appreciate your assistance in this matter.

With kind regards, I am

Sincerely yours,

T. Field Dunaway, IV
T. Field Dunaway, IV
Attorney at Law

FD/ktc

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ATTORNEYS & COUNSELORS AT LAW

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	
		2021-CP-04-_____
Jimmy Johnson, D/B/A Acquisition Properties, Inc.,)	
)	
)	
Plaintiff,)	
)	SUMMONS
vs.)	
)	
Auto-Owners Insurance,)	
)	
Defendant.)	
_____)	

To: AUTO-OWNERS INSURANCE,

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at this office at 514 S. McDuffie Street, P. O. Box 1965, Anderson, South Carolina, 29622, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

DATED this 25th day of May, 2021.

DUNAWAY LAW FRM
Attorney for Plaintiff

s/T. Field Dunaway, IV
T. FIELD DUNAWAY, IV
SC Bar #100807
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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF ANDERSON)	
)	2021-CP-04-
Jimmy Johnson, D/B/A Acquisition, Properties, Inc.,)	
Plaintiff,)	COMPLAINT
)	
vs.)	DECLARATORY JUDGMENT ACTION
)	NON-JURY
Auto-Owners Insurance,)	
)	
Defendant.)	

The Plaintiff, complaining of the Defendant herein, would respectfully show and allege unto the Court as follows:

FOR A FIRST CAUSE OF ACTION

DECLARATORY JUDGMENT

1. The Plaintiff, at the time of this action, was a citizen and resident of the County of Anderson, State of South Carolina. The Plaintiff is informed and believes that the Defendant is a corporation organized and existing under the laws of the State of South Carolina and is qualified and duly authorized and licensed to write and issue insurance policies in the State of South Carolina, County of Anderson. Accordingly, this Court has jurisdiction over all parties, matters and things contained herein.

2. This action is commenced pursuant to the authority contained in Title 15, Chapter 53, Section 10 et seq. Code of Laws of the State of South Carolina, 1976, as amended, entitled “Uniform Declaratory Judgment Acts” to construe the relative interest of the parties to this action in and to the proceeds due from a certain Commercial Insurance Policy for Plaintiff through the

Defendant. A copy of the Agreement to provide property damage insurance is attached hereto as Exhibit A.

3. The Plaintiff contends that on May 31, 2018, a tree fell on his property located at 1002 Manse Jolly Road, Anderson, South Carolina. This caused damage to the home including, but not limited to, damage to the roof and floors.

4. The Plaintiff further contends that the Defendant paid for a portion of the repairs under the Commercial Insurance Policy. However, when it was determined by the Plaintiff that there was damage to the flooring the Defendant failed to provide benefits for replacement and/or repair of the flooring and continues to deny coverage.

5. The Plaintiff contends that the insurance policy did include coverage for damage of the flooring at the time the tree fell onto the property. However, the Defendant has had a Engineering Firm perform a visual survey on the property and they determined that the damage to the flooring was not related to the tree falling on the property (please see attached Exhibit B). The Plaintiff also had a builder survey the damage to the flooring and his response was that the damage to the flooring was caused by the damage done to the home when the tree fell (please see attached Exhibit C).

6. The Plaintiff hereby requests that this Court issue its Order determining the Plaintiff's rights under the terms of the aforementioned policy of insurance.

FOR A SECOND CAUSE OF ACTION

BREACH OF CONTRACT

7. The Plaintiff reiterates each and every allegation set forth herein above as fully as if repeated herein.

8. By virtue of the Defendant's continued failure and refusal to pay the Plaintiff the monies due him under the terms of the Contract of insurance as set forth herein above, the Defendant has breached the terms of the Contract.

9. As a direct and proximate result of the Defendant's continuing breach of its contract of insurance, the Plaintiff has been damaged in that he has been denied the benefits due him under his contract of insurance with the Defendant and further, has been forced to engage the services of legal counsel in order to enforce his rights under the terms of the contract of insurance, all to the Plaintiff's damage in a sum to be determined at the trial of this case.

FOR A THIRD CAUSE OF ACTION

**UNFAIR TRADE PRACTICES AND
BAD FAITH REFUSAL TO PAY FIRST PARTY BENEFITS**

10 The Plaintiff reiterates each and every allegation set forth herein above as fully as if repeated herein.

11. The Defendant, by issuing the aforementioned policy of commercial insurance on the premises established an insurer/insured relationship between the insured and the Defendant. By establishing this relationship, the parties hereto were subjected to a duty implied by law to act fairly and in good faith in exercising the rights and performing the duties specified in the contract so that neither party would be unjustly deprived of the benefits of the contract.

12. By virtue of this implied covenant of good faith and fair dealing, the Defendant had a duty to the Plaintiff to deal with him fairly and to act in good faith, including the duty to evaluate his application for benefits properly and in a timely manner, and to refrain from refusing and/or delaying payment to the Plaintiff the sums due him under said policy of insurance without just cause to do so. The Defendant has a further duty to refrain from engaging in unconscionable tactics in processing the Plaintiff's claim for benefits.

13. Notwithstanding this implied covenant of good faith and fair dealings and the duties associated therewith, the Defendant has breached its duties under this implied covenant of good faith and fair dealing by engaging in a course of conduct which clearly and unequivocally demonstrates its bad faith and unreasonable action in handling the insured's claim for insurance benefits under the policy issued him by the Defendant.

14. As a direct and proximate result of the Defendant's bad faith and unreasonable conduct and unfair business dealing with the insured, the Plaintiff has been damaged in that he has been denied the contractual benefits due him under the terms and conditions of his policy of insurance issued by the Defendant, and in addition, has sustained other consequential damages, emotional distress and mental suffering. Further, he has been forced to engage the services of an attorney to enforce his rights under the terms of the policy, all to the Plaintiff's damage in the sum to be determined at the trial of this case.

15. Plaintiff is informed and believes that the course of conduct employed by the Defendant, based upon the Defendant's unfair method of competition, amounts to unfair and deceptive trade practices as well as bad faith in Defendant's dealing with Plaintiff's complaints as defined in the South Carolina Unfair Trade Practices Act, which states that "unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful." S.C. Code Ann. Section 39-5-20. Further, Defendant's actions in refusing to pay the amount of the insured's policy amounts to unfair trade practices.

16. Plaintiff is informed and believes that he is entitled to treble damages (actual damages x 3) along with reasonable attorney's fees and costs based upon Defendant's willful and knowing violation of the statute as it relates to unfair trade practices. If the court find that the use or employment of the unfair or deceptive method, act or practice was a willful or knowing

violation of Section 39-5-20, the court shall award three times the actual damages sustained and may provide such other relief as it deems necessary or proper. S.C. Code Ann. Section 39-5-140. Upon the finding by the court of a violation of this article, the court shall award to the person bringing such action under this section reasonable attorney's fees and costs. *Id.* Further, Plaintiff is informed and believes that the use and/or employment of unfair and deceptive methods, acts and practices of the Defendant was a willful and knowing violation of Section 39-5-20 of the Code of Laws of South Carolina, as amended, and that the Court should award three (3) times the actual damages sustained by this Plaintiff.

17. Based on this conduct, the Clerk of Court for Anderson County, South Carolina, should mail a copy of this Complaint to the Attorney General for the State of South Carolina with a request that he effect a civil penalty against this Defendant at the rate of \$5,000.00 per violation, and further that this Court award Plaintiff her reasonable costs and attorney's fees.

WHEREFORE, the Plaintiff prays as follows:

1. That this Court determine that the commercial insurance policy issued on the home and premises was in full force and effect upon the date of this loss.
2. That this Court issue its order decreeing that the Plaintiff had a contractual relationship with the Defendant which provides insurance benefits to the Plaintiff.
3. That this Court determine that the Defendant has breached the terms and conditions of its policy of insurance issued to the Plaintiff.
4. That this Court find that the Defendant acted unreasonably and in bad faith in its dealing with the Plaintiff through failing and refusing to pay the Plaintiff benefits due him under the aforementioned policy of insurance.
5. That this Court award Plaintiff his actual damages under the terms of this policy.

6. That this Court award an additional amount for the consequential damages sustained by the Plaintiff.

7. That this Court award treble damages for the willful and knowing violation of Section 39-5-20 of the Code of Laws of South Carolina, as amended, under the “South Carolina Unfair Trade Practices Act.”

8. That this Court award a reasonable amount for attorney’s fees.

9. For such other and further relief that this Court deems just and proper.

DUNAWAY LAW FIRM

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T. Field Dunaway, IV
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May 25, 2021
Anderson, South Carolina